

## ANALYSING GLOBAL DEBATE ON DEATH PENALTY IN THE ERA OF TERRORISM: 2001-2015

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*This paper analyses international debate on death penalty in the terror-hit 21<sup>st</sup> century. A decade and half of the new century has already passed. It has witnessed an unprecedented rise in executions. Ever since the 11 September 2001 (9/11) terrorist attacks on the US, there has been almost a legislative upsurge world over to pass draconian counter-terrorism laws. Death penalty happens to be a major feature of such laws. Guantanamo Bay detention camp is a vivid example of the so-called exceptional measure adopted by the US to face an exceptional threat of terrorism. The controversial practices such as water-boarding, confinement, sleep deprivation, rendition and detention, used by CIA to interrogate terror suspects have been widely debated. In this heated debate over national security and personal liberty, even the courts in democratic nations have at times upheld validity of such laws. Thus, judiciary has awarded death sentence to terror convicts. The global figures on the use of the death penalty in 2015 revealed two starkly divergent developments. On one hand, four countries abolished the death penalty, reinforcing the long-term trend towards global abolition. On the other hand, the number of executions recorded by Amnesty International during 2015 increased by more than 50% compared to 2014 and constituted the highest total that Amnesty International has reported since 1989, excluding China. It is necessary to analyse views of protagonists and antagonists of death penalty.*

### Introduction

Terrorism is a term that eludes global consensus on definition. It is usually said that one man's terrorist is another man's freedom fighter. It seems to have become a cliché by now but the point to be driven home is about its inherently divisive character. As a result of this crucial semantic difference among various nations on what exactly constitutes terrorism, the United Nations has not been able to adopt a Comprehensive Convention on International Terrorism. The negotiations for this treaty are under way at the United Nations General Assembly's Ad Hoc Committee established by Resolution 51/210 of 17 December 1996 on Terrorism and the United Nations General Assembly Sixth Committee (Legal). The negotiations are deadlocked. It is an irony that on the one hand the UN claims to be combating terrorism, already has a variety of sector specific anti-terrorism conventions, and yet it has not been able to adopt a comprehensive convention. This speaks volumes of the complexity of the problem at hand. Likewise, the term death penalty evokes strong emotions both from its proponents and opponents. Both the sides on this debate of abolishing and retaining capital punishment have irreconcilable differences. These days one

frequently hears news of terrorist attacks anywhere in the world and involvement of names of dreaded terrorist organisations like Islamic State of Iraq and Syria (ISIS), Al-Qaeda, Taliban, Haqqani Network, Jaish-e-Mohammad, Lashkar-e-Toiba, Sipah-e-Saiba, Al-Qaeda in Arabian Peninsula, Boko Haram, and Ansar Dine among many others in those barbaric attacks. While countering terrorism has been on the agenda of the United Nations for several decades, the attacks against the United States on 11 September 2001 prompted the United Nations Security Council to adopt resolution 1373, which for the first time established the Counter-Terrorism Committee (CTC).<sup>1</sup>

Five years later i.e. in 2006, all Member States of the United Nations General Assembly for the first time agreed on a common strategic framework to fight the menace of terrorism: the UN Global Counter-Terrorism Strategy. The strategy helps combine efforts of the international community to counter terrorism along following four themes<sup>2</sup>:

- i. Addressing conditions conducive to the spread of terrorism;
- ii. Preventing and combating terrorism;
- iii. Building Member States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard;

Ensuring the respect for human rights for all and the rule of law as the fundamental basis for countering terrorism. At the time of the adoption of the strategy, the United Nations General Assembly also endorsed the Counter-Terrorism Implementation Task Force (CTITF), which was set up by the United Nations Secretary-General in 2005. Comprising of 38 entities of the UN and affiliated organisations, CTITF seeks to promote coordination and coherence within the UN System on counter-terrorism and to provide assistance to Member States. The UN Counter-Terrorism Centre (UNCCT) provides capacity-building assistance to Member States and carries out counter-terrorism projects around the world in line with the aforesaid four pillars of the Global Strategy. The Security Council works to enhance the capacity of Member States to prevent and respond to terrorist acts through its subsidiary bodies, which include the Counter-Terrorism Committee, the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee, as well as the 1540 Committee on the non-proliferation of nuclear, chemical, and biological weapons. The Committees are supported in their work by different entities; whereas the Counter-Terrorism Committee has its Executive Directorate (CTED) to carry out its policy decisions and conduct expert assessments of Member States, the 1267 Committee draws on a Monitoring Team. On 15 January 2016, the Secretary-General submitted a Plan of Action to Prevent Violent Extremism to the UN General Assembly. The Plan includes recommendations for the consideration of Member States to take a more comprehensive

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<sup>1</sup> United Nations Action to Counter Terrorism <<http://www.un.org/en/counterterrorism/>> accessed 3 June 2016

<sup>2</sup> United Nations Action to Counter Terrorism <<http://www.un.org/en/counterterrorism/>> accessed 3 June 2016

approach and address the drivers of violent extremism at the local, national, regional, and global levels.<sup>3</sup> As the threat of terrorist attacks anywhere anytime has become a reality, countries around the world are passing tough laws to control terrorism. Taking into account gravity of the offence, it is natural for them to prescribe capital to harshest ever punishment to the guilty. That naturally includes death sentence. As a result, the spread of terrorism has witnessed more and more executions around the world. For example, Amnesty Report for 2015 says governments diverse parts of the globe continued to use the death penalty to respond to real or perceived threats to national security and public safety. The death penalty was used in at least seven countries for terrorism-related offences. Most executions in the Middle East and North Africa region were for such offences, and some countries made legal changes to expand the scope of the death penalty to terrorism-related offences.<sup>4</sup>

### 1. Amnesty International Global Report 2015

Amnesty International<sup>5</sup> noticed that at least 1,998 people were awarded death sentenced in 61 countries in 2015. The number of death sentences recorded in 2015 was much lower than previous years – and in particular compared to 2014, when Amnesty International reported a record-high 2,466 death sentences. However, the decline was also because of limitations in Amnesty International’s ability to substantiate data in several countries. Amnesty International recorded strikingly lower numbers of death sentences in Iran, Nigeria, Saudi Arabia, Somalia and Viet Nam, partly because of inaccessibility of information on the death penalty.<sup>6</sup>

According to the analysis done by Amnesty International, like in the past years, the death penalty was frequently taken recourse to by the governments by callously disregarding international law and standards. Amnesty’s sources suggest that Iran and Pakistan both executed individuals who were below 18 years of age when the crime was committed and that juvenile offenders remained under sentence of death in several other countries at the end of 2015. Moreover, death sentences continued to be imposed for offences that do not meet the threshold of the “most serious crimes”, to which the death penalty must be

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<sup>3</sup> United Nations Action to Counter Terrorism <<http://www.un.org/en/counterterrorism/>> accessed 3 June 2016

<sup>4</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 6

<sup>5</sup> Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. Amnesty International opposes the death penalty in all cases without exception regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The organization campaigns for total abolition of capital punishment. Amnesty is independent of any government, political ideology, economic interest or religion and is funded mainly by its membership and public donations, Amnesty International Global Report: Death Sentences and Executions 2015 (London Amnesty International 2016) 2

<sup>6</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 7

restricted under international law. Death sentences were also imposed after trials that did not comply with international fair trial standards.<sup>7</sup>

#### **Abolitionist nations and Retentionist nations:**

On the issue of capital punishment, nations can be classified into abolitionists and retentionists. Amnesty international Report states that in 2015, the total number of countries that were abolitionist for all crimes reached 102 as Republic of Congo, Fiji, Madagascar and Suriname repealed the death penalty during the year. Other countries also reported forward movement. For instance, Mongolia adopted a new Criminal Code in December 2015, that abolishes the death penalty for all crimes from 2016; then the Governor of the US state of Pennsylvania fixed a moratorium on executions in February; China and Viet Nam reduced the number of offences that can be punished by death and Malaysia announced legislative reforms to review the country's mandatory death penalty laws. Burkina Faso, Guinea, Kenya and South Korea all considered bills to abolish the death penalty.<sup>8</sup>

The perceptive analysis done by Amnesty reveals that irrespective of the frightening rise in executions in Iran, Pakistan and Saudi Arabia, the over-all global shift is towards abolition of the death penalty. Amnesty International points out that when it launched its campaign for abolition in 1977, only 16 countries had fully abolished the death penalty. Today the majority of the world's countries are fully abolitionist, and dozens more have not invoked death sentences for over a decade, or have given ample hints that they are moving towards full abolition. The diametrically opposite developments of 2015 reveal that the number of countries using the death penalty is dwindling.<sup>9</sup>

Amnesty Report claims that the worldwide statistics on the use of the death penalty in 2015 revealed two starkly divergent developments. On one hand, four countries abolished the death penalty, reinforcing the long-term trend towards global abolition. On the other hand, the number of executions recorded by Amnesty International during the year increased by more than 50% compared to 2014 and constituted the highest total that Amnesty International has reported since 1989, excluding China.<sup>10</sup>

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<sup>7</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 6

<sup>8</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 6

<sup>9</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 6

<sup>10</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016)7

<sup>10</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016)7

Amnesty International registered a whopping 54% increase in the number of executions across the globe in 2015. It notes that at least 1,634 people were executed, 573 more than in 2014.<sup>11</sup> These numbers do not include the executions carried out in China, where information on the use of the death penalty remained classified as a state secret. This is quite strange that information on death penalty is regarded as a national secret in China. Disturbingly, of all the documented executions, 89% were carried out in merely three nations namely Iran, Pakistan and Saudi Arabia. Number of executions in Iran and Saudi Arabia noticed by Amnesty International rose by 31% and 76%, respectively, compared to 2014. Over 320 individuals were executed in Pakistan in 2015. Its data suggests that this was the highest number of executions that Amnesty International ever recorded for Pakistan in a year and follows the official decision to lift a six-year moratorium on executions on 17 December 2014. Amnesty International recorded seven executions in December 2014 and 326 in 2015, bringing the total number of executions in Pakistan since December 2014 to 333.<sup>12</sup>

Amnesty International also documented a remarkable rise in executions in Egypt and Somalia, by 47% (from 15+ in 2014 to 22+ in 2015) and 79% (from 14+ in 2014 to 25+ in 2015), respectively. Above all, Amnesty International happened to register executions in 25 countries, three more than in 2014. Chad and Oman resumed executions after years without executing anyone. Bangladesh, India, Indonesia and South Sudan executed people in 2015; no executions were reported in these countries in 2014, although each executed people in 2013. Three countries that executed in 2014 – Belarus, Equatorial Guinea, Palestine – did not order any executions in 2015. As in the past, Amnesty International could not verify information about judicial executions in Syria. In 2013, 2014 and 2015 consecutively, Amnesty International was unable to confirm reports on executions in Syria.<sup>13</sup>

#### **Various methods of executions:**

Nations followed diverse methods of executions: for instance, beheading (Saudi Arabia), hanging (Afghanistan, Bangladesh, Egypt, India, Iran, Iraq, Japan, Jordan, Malaysia, Pakistan, Singapore, South Sudan, Sudan), lethal injection (China, US, Viet Nam) and

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<sup>11</sup> Amnesty informs that until 2015, it presented in its annual reports on the global use of the death penalty two figures for executions in Iran: the figure of officially announced executions, which the organization used as its main figure in infographics and short text; and the figure relating to those executions that were not officially announced. From 2016 onward, Amnesty International will use the sum of officially announced and non-officially announced executions as its main figure. The aggregated figure of executions in Iran for 2014 is 743, which brings the number of global executions that Amnesty International recorded for the same year to 1,061.

<sup>12</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 8

<sup>13</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 8

shooting (Chad, China, Indonesia, North Korea, Saudi Arabia, Somalia, Taiwan, United Arab Emirates (UAE), Yemen). Amnesty International in its report for 2015 informs us that it was unable to confirm whether executions in Oman were carried out by hanging or shooting.<sup>14</sup>

### **Questions over fairness of trial:**

Amnesty International argues that in most of the countries where people were sentenced to death or executed, the death penalty was imposed after proceedings that did not meet international standards of fair trial. In 2015 Amnesty International expressed concerns over court proceedings in Bangladesh, Belarus, China, Egypt, Iran, Iraq, Libya, North Korea, Pakistan, Saudi Arabia and Viet Nam. In many jurisdictions – including Bahrain, China, Iran, Iraq, North Korea and Saudi Arabia – some of the convictions as well as death sentences were based on “confessions” that might have been extracted through torture or other ill-treatment. In Iraq some of these “confessions” were telecast before the trial was held, further violating the defendants’ right to presumption of innocence.<sup>15</sup>

## **2. Terrorism, National Security Threats and Death Penalty**

In almost all regions of the world, the death penalty was used by governments to respond to real or perceived threats to national security and public safety posed by “terrorism”, crime or political instability, despite uncertainty about the deterrent value of death penalty in committing violent crime.<sup>16</sup>

Amnesty reminds that in the Americas, Guyana introduced the mandatory death penalty for acts of “terrorism” resulting into death. In Asia-Pacific, three people from the Uighur minority were executed in the Chinese province of Yunnan after they had been convicted of murder and leading a “terrorist” organization for their alleged association with five people involved in a 2014 attack at the Kunming train station that resulted in the death of 31 people. Indonesia executed 14 people convicted of drug-related offences to confront “a national emergency” in drug-related deaths. Pakistan executed more than 320 people since it lifted a six-year long moratorium on the execution of civilians in the aftermath of the Peshawar school attack.<sup>17</sup>

In the Middle East and North Africa, the death penalty was used for terrorism-related offences in Algeria, Egypt, Iraq and Tunisia. In Jordan, two people were hanged in

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<sup>14</sup>Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016)8, 9

<sup>15</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 11

<sup>16</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 12

<sup>17</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 12 13

February in response to the release of a video by the Islamic State depicting the brutal killing of a Jordanian fighter pilot. Both individuals had been convicted of terrorism charges. Iraq sentenced 24 men to death by hanging under Article 4 of the 2005 Anti-Terrorism Law after convicting them of involvement in the killing of at least 1,700 military cadets from the Speicher Military Camp, near Tikrit in Salahuddin governorate, on 12 June 2014. The brief trial of the men relied primarily on “confessions” obtained from the defendants during interrogation, and video footage of the massacre. In July 2015, Tunisia adopted a new law that provided for the use of the death penalty for terrorism-related offences. In sub-Saharan Africa, Cameroon sentenced 89 suspected members of the armed group Boko Haram to death. Chad executed 10 suspected Boko Haram members and introduced a new anti-terrorism law that provided for the death penalty.<sup>18</sup>

### Debates for and against Death Penalty:

Capital punishment is the sentence of death, or practice of execution, handed down as punishment for a criminal offence. It can only be used by a state, after a proper legal trial. The United Nations in 2008 adopted a resolution (62/149) calling for a moratorium on the use of the death penalty, however fifty-eight countries, including the United States and China, still exercise the death penalty. As such, the topic remains highly controversial. Abolitionist groups and international organisations argue that it is cruel and inhumane, while proponents claim that it is an effective and necessary deterrent for the most heinous of crimes.<sup>19</sup>

The debate over capital punishment be it in the courts, in state legislatures, or on nationally televised talk shows—is always fraught with emotion. The themes have changed little over the last two or three centuries. Does it deter crime? If not, is it necessary to satisfy society’s desire for retribution against those who commit unspeakably violent crimes? Is it worth the cost? Are murderers capable of redemption? Should states take the lives of their own citizens? Are current methods of execution humane? Is there too great a risk of executing the innocent?<sup>20</sup>

This debate is not unique to any one country. Nations around the world—judges, legislators, and ordinary citizens—have struggled to reconcile fervent calls for retribution with evidence that the death penalty does not deter crime. They have argued about whether

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<sup>18</sup> Amnesty International Global Report: Death Sentences and Executions 2015 (Amnesty International 2016) 13

<sup>19</sup> ‘Debates- This house supports the death penalty- Points For; Points Against’ (International Debate Education Association IDEA) <<http://idebate.org/debatabase/debates/capital-punishment/house-supports-death-penalty>> accessed 3 June 2016

<sup>20</sup> Sandra Babcock, ‘The Global Debate on the Death Penalty’ (Spring 2007) 34(2) *Human Rights Magazine*, <[http://www.americanbar.org/publications/human\\_rights\\_magazine\\_home/human\\_rights\\_vol34\\_2007/spring2007/irr\\_hr\\_hr\\_spring07\\_babcospr07.html](http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol34_2007/spring2007/irr_hr_hr_spring07_babcospr07.html)> accessed 4 June 2016

the death penalty is a cruel, inhuman, or degrading treatment or punishment. They have weighed its costs against the need for an effective police force, schools, and social services for the indigent. National leaders have engaged in these discussions while facing rising crime rates and popular support for capital punishment. Yet, while the United States has thus far rejected appeals to abolish the death penalty or adopt a moratorium, other nations have—increasingly and seemingly inexorably—decided to do away with capital punishment.<sup>21</sup>

### 3. Points in favour of Death Penalty:<sup>22</sup>

- i. It helps the victims' families achieve closure.
- ii. The death penalty deters crime.
- iii. Execution prevents the accused from committing further crimes.
- iv. The death penalty should apply as punishment for first-degree murder; an eye for an eye.
- v. Execution helps alleviate the overcrowding of prisons.

### 4. Points against Death Penalty:<sup>23</sup>

- i. State-sanctioned killing is wrong.
- ii. The death penalty is a financial burden on the state.
- iii. Wrongful convictions are irreversible.
- iv. The death penalty can produce irreversible miscarriages of justice.

After having had seen theoretical issues besides the glance at Amnesty Report 2016 based on empirical evidence of 2015 events, this paper mentions a couple of judicial decisions of Pakistani and Bangladeshi courts on death sentences and surrounding political controversies. It is just an effort to illustrate how deeply the societies are divided on this polarising issue.

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<sup>21</sup> Sandra Babcock, 'The Global Debate on the Death Penalty' (Spring 2007) 34(2) *Human Rights Magazine*,

<[http://www.americanbar.org/publications/human\\_rights\\_magazine\\_home/human\\_rights\\_vol34\\_2007/spring2007/irr\\_hr\\_hr\\_spring07\\_babcospr07.html](http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol34_2007/spring2007/irr_hr_hr_spring07_babcospr07.html)> accessed 4 June 2016

<sup>22</sup> 'Debates- This house supports the death penalty- Points For' (*International Debate Education Association IDEA*) <<http://idebate.org/debatabase/debates/capital-punishment/house-supports-death-penalty>> accessed 3 June 2016

<sup>23</sup> 'Debates- This house supports the death penalty- Points Against' (*International Debate Education Association IDEA*) <<http://idebate.org/debatabase/debates/capital-punishment/house-supports-death-penalty>> accessed 3 June 2016



## 5. Pakistan Supreme Court Judgement in 2015 on Upholding Award of Death Penalty

In *Malik Muhammad Mumtaz Qadri* (in Criminal Appeal No. 210 of 2015); *The State* (in Criminal Appeal No. 211 of 2015) ... Appellants versus *The State*, etc. (in Criminal Appeal No. 210 of 2015); *Malik Muhammad Mumtaz Qadri* (in Criminal Appeal No. 211 of 2015) ... Respondents, Pakistani Supreme Court made interesting observations. Brief facts of the case were as follows:

At about 04.15 PM on 04.01.2011 Mr. Salman Taseer, the then Governor of the Province of the Punjab, was returning home near Kohsar Market, Islamabad when Malik Muhammad Mumtaz Qadri appellant, serving in the Elite Force of the Punjab Police and performing the duties of an official guard of the Governor at that time, opened fire at Mr. Salman Taseer from his official weapon riddling his body with bullets and causing multiple injuries. The grievously injured Mr. Salman Taseer was immediately shifted to Polyclinic Hospital, Islamabad but upon arrival at the hospital he was declared dead. Soon after firing at Mr. Salman Taseer the appellant laid down his weapon and surrendered before the other official guards deputed on the Governor's security who arrested him at the place of occurrence and secured the weapon of offence.<sup>24</sup>

Mr. Shehryar Taseer, a son of Mr. Salman Taseer deceased, reported the matter to the local police through an application at 05.10 PM on the same day whereafter formal FIR No. 06 was registered in that regard at Police Station Kohsar, Islamabad at 05.25 PM during the same evening for offences under section 302, PPC read with section 109, PPC and section 7 of the Anti-Terrorism Act, 1997.<sup>25</sup>

The court said the law of the land does not permit an individual to arrogate unto himself the roles of a complainant, prosecutor, judge and executioner. The appellant was a trained police officer who knew the importance of recourse to the law. The appellant was very well aware of the case of Mst Asia Bibi who was alleged to have committed the offence of blasphemy and through the course of law she had been convicted for that offence by a trial court. If the appellant had suspected Mr. Salman Taseer to have committed the offence of blasphemy, then he should also have adopted the legal course knowing that the embargo contained in the provisions of Article 248 of the Constitution against criminal proceedings

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<sup>24</sup> Malik Muhammad Mumtaz Qadri (Criminal Appeal No. 210 of 2015); The State (Criminal Appeal No. 211 of 2015) v The State, etc. (Criminal Appeal No. 210 of 2015); Malik Muhammad Mumtaz Qadri (Criminal Appeal No. 211 of 2015) [Supreme Court of Pakistan, Islamabad] [07 October 2015] [3]  
<[http://www.supremecourt.gov.pk/web/user\\_files/File/Crl.A.\\_210\\_2015.pdf](http://www.supremecourt.gov.pk/web/user_files/File/Crl.A._210_2015.pdf)> accessed 2 June 2016

<sup>25</sup> Malik Muhammad Mumtaz Qadri (Criminal Appeal No. 210 of 2015); The State (Criminal Appeal No. 211 of 2015) v The State, etc. (Criminal Appeal No. 210 of 2015); Malik Muhammad Mumtaz Qadri (Criminal Appeal No. 211 of 2015) [Supreme Court of Pakistan, Islamabad] [07 October 2015] [3]  
<[http://www.supremecourt.gov.pk/web/user\\_files/File/Crl.A.\\_210\\_2015.pdf](http://www.supremecourt.gov.pk/web/user_files/File/Crl.A._210_2015.pdf)> accessed 2 June 2016

against a serving Governor of a Province was only temporary in nature and not permanent. Apart from that the

appellant had acted in this case on the basis of nothing but hearsay and he had murdered the serving Governor of his Province without making any effort whatsoever to get his information about commission of blasphemy by Mr. Salman Taseer verified or confirmed. Throughout the world a police officer committing a crime is dealt with more sternly in the matter of his sentence than an ordinary person because an expectation is attached with a police officer that in all manner of circumstances he would conduct himself strictly in accordance with the law and under no circumstances he would take the law in his own hands. If the asserted religious motivation of the appellant for the murder committed by him by taking the law in his own hands is to be accepted as a valid mitigating circumstance in this case, then a door shall become open for religious vigilantism which may deal a mortal blow to the rule of law in this country where divergent religious interpretations abound and tolerance stands depleted to an alarming level. It may also be relevant in the context of the appellant's sentence that in the execution of his design he had riddled his victim's body with as many as twenty-eight bullets causing thirty-two grievous injuries which clearly showed that the appellant had acted cruelly and brutally in the matter and such cruelty and brutality demonstrated by the appellant detracts from any sympathy to be shown to him in the matter of his sentence.<sup>26</sup>

The court went further and said it is difficult to ignore that in his statement recorded under section 342 CrPC the appellant had also maintained that Mr. Salman Taseer used to indulge in different kinds of immoral activities. This part of the appellant's statement had opened a window to the appellant's mind and had clearly shown that it was not just the alleged commission of blasphemy by Mr. Salman Taseer which prompted the appellant to kill him but there was some element of personal hatred for Mr. Salman Taseer which too had played some part in propelling the appellant into action against him. Such mixture of personal hatred with the asserted religious motivation had surely diluted, if not polluted, the acclaimed purity of the appellant's purpose. For all the reasons detailed above no occasion was found by the court for reducing the appellant's sentence from death to imprisonment for life for the offences of terrorism and murder committed by him.<sup>27</sup>

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<sup>26</sup> Malik Muhammad Mumtaz Qadri (Criminal Appeal No. 210 of 2015); The State (Criminal Appeal No. 211 of 2015) v The State, etc. (Criminal Appeal No. 210 of 2015); Malik Muhammad Mumtaz Qadri (Criminal Appeal No. 211 of 2015) [Supreme Court of Pakistan, Islamabad] [07 October 2015] [27]  
<[http://www.supremecourt.gov.pk/web/user\\_files/File/Crl.A.\\_210\\_2015.pdf](http://www.supremecourt.gov.pk/web/user_files/File/Crl.A._210_2015.pdf)> accessed 2 June 2016

<sup>27</sup> Malik Muhammad Mumtaz Qadri (Criminal Appeal No. 210 of 2015); The State (Criminal Appeal No. 211 of 2015) v The State, etc. (Criminal Appeal No. 210 of 2015); Malik Muhammad Mumtaz Qadri (Criminal Appeal No. 211 of 2015) [Supreme Court of Pakistan, Islamabad] [07 October 2015] [27]  
<[http://www.supremecourt.gov.pk/web/user\\_files/File/Crl.A.\\_210\\_2015.pdf](http://www.supremecourt.gov.pk/web/user_files/File/Crl.A._210_2015.pdf)> accessed 2 June 2016

## 6. Pakistan Military Court Executes Four Army Public School terrorists in Kohat:

Four Taliban gunmen involved in the Army Public School attack in Peshawar in December 2014 were hanged at a civil jail in Kohat on 2 December 2015. The hangings were the first executions of civilians convicted by Pakistan's military courts. A security source confirmed the execution of the four terrorists saying, "Four militants involved in the attack on Army Public School were hanged this morning in Kohat prison". The executions were confirmed by a prison official, who said the militants had held a final meeting with their families on Tuesday night, reported AFP. The executions come as the country prepares to observe the first anniversary of the attack on Dec 16. The Army Chief had signed the black warrants of Maulvi Abdus Salam, Hazrat Ali, Mujeebur Rehman and Sabeel alias Yahya on Monday. The mercy appeals of the terrorists were rejected by President Mamnoon Hussain. Militants stormed the school on Dec 16, 2014, killing at least 144 people — most of whom were children. In the wake of the APS carnage, military courts were set up for trying terrorists under amendments made to the Constitution and the Army Act. This was the first sentence approved by the army chief following the Supreme Court's August 2015 judgement giving legal cover to the establishment of military courts.<sup>28</sup>

## 7. Political Consensus on setting up Military Courts to try Terror Suspects:

Political parties in Pakistan had unanimously agreed over the issue of setting up military courts to tackle terrorism cases in the country following the gruesome attack on the Army Public School in Peshawar on 13 December 2014, following which the Parliament passed the 21st constitutional amendment in January 2015 to set up the said courts. President Mamnoon Hussain had also promulgated an ordinance further revising the recently amended Army Act to ostensibly aid the functioning of military courts by allowing for trials in camera, i.e without the presence of the public or the media, and over video link if necessary. The Supreme Court in a majority ruling upheld the establishment of military courts in Pakistan. Petitions challenging the 21st amendment were dismissed in August 2015 in a majority 11-6 vote of the 17-member SC bench. Chief Justice Nasirul Mulk and Justice Dost Muhammad announced the verdict. In a 14-3 majority vote, petitions challenging the 18th amendment were also dismissed by the bench. Judges provided seven opinions and two additional notes on the ruling.<sup>29</sup>

## 8. War Crimes Trials in Bangladesh:

For last few years Bangladesh has been in news for war crimes trials. It is a highly controversial issue in Bangladesh. It may be pertinent to look at it in brief. The

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<sup>28</sup> Ali Akbar, 'Pakistan Military Court Sentences Army Public School Terrorists to Death in Kohat', *Dawn* (Karachi, 2 December 2015) <<http://www.dawn.com/news/1223727>> accessed 3 June 2016

<sup>29</sup> Ali Akbar, 'Pakistan Military Court Sentences Army Public School Terrorists to Death in Kohat', *Dawn* (Karachi, 2 December 2015) <<http://www.dawn.com/news/1223727>> accessed 3 June 2016

International Crimes (Tribunals) Act, 1973 (Act No. XIX of 1973), was enacted by the sovereign parliament of Bangladesh to provide for the detention, prosecution and punishment of persons responsible for committing genocide, crimes against humanity, war crimes and other crimes under international law. The Tribunal constituted under the Act has the power to try and punish any individual or group of individuals or organizations, or any member of any armed, defence or auxiliary forces irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, whether before or after commencement of this Act, any crimes mentioned in sub section [2] of section 3 of the Act. Under section 6 of the Act the government may, by notification in the official gazette, set up one or more tribunals each consisting of a Chairman and not less than two and not more than four other Members.

On 22/3/2012 government by official gazette notification established another tribunal namely International Crimes Tribunal-2. Thus, two tribunals were established under the ICTA (1973) with the same jurisdiction mentioned in section 3 of the ICTA (1973). The ICT-1 and the ICT-2 has separate rules of procedures of its own.<sup>30</sup> Tribunal, on hearing both sides and on perusal of materials, documents, statement of witnesses, DVDs may frame charge(s), if it is satisfied that there is reasonable ground to believe, prima facie, that the accused committed the offences as enumerated in the Act of 1973. After framing charge, trial commences and both sides shall have rights to adduce and examine witnesses in support of their respective cases and defense. Under section 21(1) of the Act a person convicted of any crime specified in section 3 and sentenced by a Tribunal shall have the right to appeal to the Appellate Division of the Supreme Court of Bangladesh, the highest judicial forum of the country, against such conviction and sentence. Under section 21(2) the government or the complainant or the informant also shall have the right of appeal against an order and verdict of acquittal or an order of sentence.<sup>31</sup>

The Tribunal is a domestic judicial mechanism set up under national legislation and it is meant to try internationally recognized crimes and that is why it is known as 'International Crimes Tribunal'. Despite the fact that ours is a domestic Tribunal set up under International Crimes (Tribunal) Act, 1973, a domestic legislation, the Tribunal shall never be precluded to seek guidance from the universally recognized norms and principles laid down in international law and International Criminal Law with a blend of national law, in trying the persons responsible for perpetration of crimes enumerated in the Act of 1973. All

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<sup>30</sup> Since 15.9.2015 only Tribunal-1 has been functioning on being reconstituted and Tribunal-2 remains non-functioning. International Crimes Tribunal-1, Bangladesh <<http://www.ict-bd.org/ict1/index.php>> accessed 2 June 2016

<sup>31</sup> Since 15.9.2015 only Tribunal-1 has been functioning on being reconstituted and Tribunal-2 remains non-functioning. International Crimes Tribunal-1, Bangladesh <<http://www.ict-bd.org/ict1/index.php>> accessed 2 June 2016

possible provisions ensuring adequate rights of defense have been enshrined in the ICTA and the Rules as well.<sup>32</sup>

Despite these legal and procedural assurances, Bangladesh government of Prime Minister Sheikh Hasina Wajed has been criticised at home as well as abroad. Western human rights activists, jurists and Pakistan have been overseas critics while opposition parties in Bangladesh have roundly condemned the war crimes trials. All the opposition political parties in Bangladesh have accused PM Sheikh Hasina Wajed of vendetta and revenge. Sir Desmond de Silva<sup>33</sup> acknowledges and reminds us that Bangladesh was born in violence. He says the civil war between those who wanted the country to remain as East Pakistan were ranged against those who sought independence. The Liberation War as it is now known, left according to many estimates nearly three million dead, a death toll higher than the Rwandan Genocide, the Yugoslav wars of the 1990s and the Sierra Leonean and Liberian civil wars all put together.<sup>34</sup> He concedes that it is beyond doubt crimes were committed on a massive scale in Bangladesh and many of the victims as well as perpetrators of serious crimes are still alive, it is still possible to bring to justice those from all sides accused of committing atrocities during the conflict. As the trial of Charles Taylor, former President of Liberia, by the Special Court for Sierra Leone for which I was Chief Prosecutor underlines is the need to ensure the hammer of international justice is seen to be brought down on those who commit the most egregious crimes by impartial and independent judges.<sup>35</sup> For him what is also clear to many inside and outside the country is the government of Bangladesh is not attempting to use the Tribunal to deliver justice for victims, as was their election pledge, but to target its political opposition that it repeatedly labels as anti-liberation.<sup>36</sup>

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<sup>32</sup> Since 15.9.2015 only Tribunal-I has been functioning on being reconstituted and Tribunal-2 remains non-functioning. International Crimes Tribunal-1, Bangladesh <<http://www.ict-bd.org/ict1/index.php>> accessed 2 June 2016

<sup>33</sup> Sir Desmond de Silva QC, former Prosecutor of the Special Court for Sierra Leone (*No Peace Without Justice Newsletter*) <<http://www.npwj.org/ICC/Bangladesh-War-Crimes-Tribunal-should-be-internationalised-sake-nation%E2%80%99s-future.html>> accessed 2 June 2016

<sup>34</sup> Sir Desmond de Silva QC, 'The Bangladesh War Crimes Tribunal should be internationalised for the sake of the Nation's Future' (*No Peace Without Justice Newsletter*) <<http://www.npwj.org/ICC/Bangladesh-War-Crimes-Tribunal-should-be-internationalised-sake-nation%E2%80%99s-future.html>> accessed 2 June 2016

<sup>35</sup> Sir Desmond de Silva QC, 'The Bangladesh War Crimes Tribunal should be internationalised for the sake of the Nation's Future' (*No Peace Without Justice Newsletter*) <<http://www.npwj.org/ICC/Bangladesh-War-Crimes-Tribunal-should-be-internationalised-sake-nation%E2%80%99s-future.html>> accessed 2 June 2016

<sup>36</sup> Sir Desmond de Silva QC, 'The Bangladesh War Crimes Tribunal should be internationalised for the sake of the Nation's Future' (*No Peace Without Justice Newsletter*) <<http://www.npwj.org/ICC/Bangladesh-War-Crimes-Tribunal-should-be-internationalised-sake-nation%E2%80%99s-future.html>> accessed 2 June 2016

Kristine A. Huskey<sup>37</sup> points out almost 40 years later, the people of Bangladesh will finally see justice done for war crimes and other atrocities committed during the 1971 War of Liberation. Or will they? She argues, justice can only be done for the victims, their families, and the perpetrators, if the Tribunal is fair and is seen as being fair by the people of Bangladesh and the international community, of which Bangladesh is a key participant as the first nation in South Asia to become a state party to the Rome Statute (for the International Criminal Court) and a signatory to the International Covenant on Civil and Political Rights (ICCPR).

The diplomatic relations with Pakistan also dipped to the lowest ebb over May 2016 Supreme Court's war crimes verdict against Motiur Rahman Nizami, chief of Bangladesh Jamaat-e-Islami. Bangladesh once again snubbed Pakistan for meddling in its internal affairs. Pakistan's denial of war crimes in Bangladesh triggered diplomatic outrage. State Minister for Foreign Affairs Shahriar Alam made the statement on 5 May reacting to Pakistan's expression of concern over the dismissal of Motiur Rahman Nizami review plea against capital punishment verdict for crime against humanity he committed in 1971 as chief of death squad al-Badr, responsible for killing of intellectuals. The country has also asked Pakistan "to stop misinterpreting" the April 1974 'tripartite agreement' signed by Bangladesh, India and Pakistan.<sup>38</sup>

### Conclusion:

The case of Bangladesh war crimes trials being held after 40 years and awarding death penalty to opponents of country's independence from Pakistan who indulged in unpardonable war crimes clarifies the point that it is not merely an abstract legal issue. Law and justice do not operate in vacuum. Another point in this controversy is the criticism emanating from Pakistan which itself is sentencing an unprecedented number of people to death. Therefore Bangladesh is justified in sharply objecting to Pakistani reaction as an interference in its internal matters. Thus, justice is most of the time a zero-sum game. That us even more so if the parties insist on death penalty to the culprit. Jurisprudence is not yet settled over superiority of theories of retribution, deterrence, reform and forgiveness. Thus, terrorism and death penalty seem to be congenital Siamese twins. They have a symbiotic relationship.

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<sup>37</sup> Kristine A. Huskey is an attorney and consultant on matters of national security law and policy and international humanitarian and human rights law, <http://www.crimesofwar.org/commentary/the-international-crimes-tribunal-in-bangladesh-will-justice-prevail/> accessed 3 June 2016

<sup>38</sup> Saleem Samad, 'Bangladesh snubs Pakistan over war crimes trial remarks' *Asian Age* (Dhaka, 09 May 2016) <<http://dailyasianage.com/news/18392/bd-snubs-pak-over-war-crimes-trial-remarks>> accessed 3 June 2016